LABOUR DEPARTMENT

The 9th September, 1994

No. 14/13/87-6Lab./34. - In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947(Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, -II, Faridabad, in respect of the dispute between the Workmen and the management of M/s Transport Commissioner Haryana Chandigarh and etc. *versus* Shri Karan Singh

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT, II, FARIDABAD

Reference No. 502 of 1992

between

M/S. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH
2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD ... *Management*

versus

SHRI KARAN SINGH, SON OF SHRI RANJIT SINGH, HOUSE NO. 2247, HOUSING BOARD COLONY, SECTOR 3, TIGAON ROAD, BALLABGARH

Present :

Shri H.R. Dua, for the workman.
Shri Suraj Parkash for the Management.

AWARD

In exercise of the powers conferred by clause (c) of sub section (i) of Section 10 of the Industrial Disputes Act, 1947 (here after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication, *vide* Haryana Government Endorsement No. 52231 -237, dated 27th November, 1992: -

> "Whether the termination of services of Shri Karan Singh is legal and justified ? If not, to what relief, is he entitled to ?(As per reference)."

2. The case of the workman is that he was taken into service of Respondent No. 2 in the year 1981 as driver and his last drawn salary was Rs. 2550. He had never given any opportunity of complaint and his work and conduct was satisfactory. Incidently, he fell sick on 25th December, 1989 and applied for leave according to rules supported with medical certificate. The medical certificate was seen with doubt and enquiry was ordered. The enquiry officer exonerated him of the charges. The respondent No. 2 however did not agree with the findings of the enquiry without and lawful reason and served him a show cause notice dated 12th November, 1991. The said show cause notice was based on conjectures and surmises against the findings of the enquiry officer and without any fresh material. It was unwarranted, unlawful and abues of Managerial powers. It was violative of principles of natural justice. He submitted correct statement of the facts. The respondent No. 2 however, illegally terminated his services. The workman raised demand in industrial dispute before the Labour-cum-Conciliation Officer. The respondent No. 1 did not appear before the Labour cum-Conciliation Officers he had no defence to offer. He is thus, entitled to be reinstated into service with continuity in service and full back wages

3. The respondent No. 2 submitted written statement dated 18th March, 1993 stating therein that the workman was appointed in the year 1982 and not in the year 1981. The work and conduct of the workman was not satisfactory. The workman absented from duty w.e.f. 26th December, 1989. He had never formed about his illness till 21st May, 1990. The holding of enquiry had already been ordered. The medical certificate was seen with doubt only after the holding of the enquiry against the workman. The show cause notice with a dissenting note was legally served upon by him. The reply given by the workman wasmnot based on true facts. Thus, his services were rightly terminated. With regard to the proceedings before Conciliation Officer, it was submitted that the same had ended in failure of any settlement. The workman is not entitled to any relief prayed for by him.

4. The workman submitted replication dated 10th May 1993 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed :

1. Wether the termination of services of Shri Karan Singh legal and justified ? If not to what relief, is he entitled to ? (As per reference).

6 Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the afore said issue are as under :—

Issue No. 1 :

8. The management has examined only one witness MW-1 Mahinder Singh, Establishment clerk dealing with the cases of drivers. He deposed that the workman was appointed on 27th January, 1982. It was reported by Puran Lal, Works Inspector through report Ex. M-1 that the workman was absent from duty. The workman was asked to resume duty through telegram Ex. K-2. Another report Ex. M-3 regarding the absence of the workman was then received. On receipt of that report charge sheet Ex. M-4 was issued to the work an through registered post. The registered letter was received back undelivered. No reply was received from the workman. The Assistant Accounts Officer was appointed as enquiry officer through letter Ex. M-5. The workman submitted reply dated 22nd May, 1990 Ex. M-6 to the charge and it was passed on to the enquiry officer. The enquiry was conducted on 27th September, 1991 as per proceedings Ex. M-7. Meanwhile the workman was allowed to resume duty as per order Ex. M-8. The enquiry officer submitted his report Ex. M-9. The General Manager did not agree with findings of the enquiry officer and recorded his dissenting not as contained in Ex. M 10. Then the workman was issued a show cause notice Ex. M-11. The workman submitted reply to the show cause notice Ex. M-12. The workman was afforded three opportunities through letters Ex. M-13 to Ex. M-15 for personnel hearing. The services of the workman were terminated through letter Ex. M-16.

9. On the other hand, the workman reiterated the position mentioned in the claims statement referred to above. In the end, he stated that the General Manager had no material on record against him and as a such the order of terminating his services passed by him is illegal. He is entitled to be reinstated into service with full back wages.

10. It has been submitted on behalf of the management that it stands proved from the evidence placed in file that the services of the workman were terminated on account of his wilful abesnce from duty for aperiod of about six months. The workman has noted any evidence to show that he had sent any application or medical certificate during long period of his absence. The workman admitted in his cross-examination that he had submitted medical certificates in person on the date when the had sought permission toj oin duty. The respondent No. 2 had powers to differ with the findings of the enquiry officer by recording dissenting note and he rightly did so when the medical certificates produced by the workman appeared to him doubtful. workman was afforded full opportunity to defend his case. The principles of natural justice were duly followed before passing this impugned order. The impugned order is thus, legal and valid and the workman is not entitled to the relief claimed by him.

11. In reply it has been contended on behalf of the workman that it is admitted by the witness examined by the management that the enquiry officer had exonerated him of the charge of wilful absence from duty. It was also admitted by him in cross-examination that no other documents except those which were produced before the enquiry officer are on record. It is thus, clear that the respondetnt No. 2 had absolutely no material with him to doubt the validity of the two medical certificates submitted by the workman. It is clear from the perusal of the impugned dissenting note Ex. M-10 that he entertained doubt that the medical certificates produced by the workman were false. It is so mentioned in para 4 of the written statement that the medical certificate were seen with doubt only after the holding of enquiry against the workman. The workman clearly explained in his reply dated 5th December, 1991 Ex. M-12 that Dr. S.K. Singh had issued certificate dated 27th March, 9190 stating therein that he was fit to resume duty w.e.f. 28th March, 1990 but unfortunately he had again fell ill and had remained under treatment of the same doctor that is Dr. S.K. Singh and therefore the second certificate dated 21st May, 1990 was issued to him declaring him physically fit to resume duty on 22nd May, 1990. The respondent No. 2 has not made mention in the impugned order Ex. M-16 as to how the explanation given by the workman, was unsatisfactory. It is thus, clear that the impugned order was passed by respondent No. 2 on the basis of suspicion and not on the basis of material on record. The impugned order is thus, illegal void.

12. To shore the aforesaid contentions the authorised representative of the workman placed reliance on the decision in the case between Gurbux Singh and Union of India and others 1970 FLR 38, Hira Lal Deb Nath and another *versus* Union of India, New Delhi and another AIR 1972 Tripura 7, Monoranjan Das *versus* Commissioner, Presidency division and others AIR 1970 Calcutta 179, T.S. Srivastava *Versus* State of Assam and others AIR 1972 Gauhati 2 and the State of Assam and another *Versus* Bimal Kumar Pandit AIR 1963 Supreme Court 1612 which was held that the disciplinary proceedings being of quasi judicial nature the punishing authority, when he punishes the delinquent in its disagreement with the recommendations of the enquiry officer, must give his reasons for such its disagreement.

13. The authorised representatives of the workman has also referred to the decision in the case between Kuppaswami(P.S.) and State of Madras 1956(II)LLJ 165 in which it was held that the authority competent to punish has jurisdiction to depart from conclusions of the enquiry officer as well as from its own provisional

conclusions when recording its final conclusions both on the question of truth of the charges and on the punishment to be inflicted. However, mere suspiction against a civil servant could not be considered to be good and sufficient reason for which the penalty could be imposed on an employee and as such the order based on suspicion was required to be quashed.

14. It is evident from the position discussed above that the respondent No. 2 afforded an opportunity to the workman to explain his position with regard to the charges levelled against him by passing order for holding of domestic enquiry. It is also clear that the punishing authority had powers to record his dissenting views. In this case respondent No. 2 exercised that power and recorded dissenting note Ex. M-10. A copy of this dissenting note was supplied to the workman alongwith show cause notice and he submitted reply. It also appears from perusal of the final order dated 9th June, 1992 Ex. M-16 that the workman was afforded opportunity of personnel hearing though he denied this fact in his statement on oath. In these circumstances, it can be taken that the respondent No. 2 afforded reasonable opportunity to the workman to defend his case by following the principles of natural justice and the procedure laid down in the cases referred to by the authorised representatives of the workman mentioned in para 12 of this judgement.

15. There is, however, merit in the submission made on behalf of the workman that the dissenting note of respondent No. 2 is based on suspecion. It is also mentioned in para 4 of the written statement. The respondent No. 2 had no material before him while recording the dissenting note that the two medical certificates produced by the workman were false. There was no material before him that the workman was not actually ill. The respondent No. 2 however based his dissenting opinion on three grounds. Firstly that the medical certificates submitted by the workman related to private hospital. Secondly according to the first medical certificate the workman should have resumed his duty w.e.f. 28th March, 1990 but instead of resuming duty he again not prepared medical certificates for rest upto 21st May, 1990. Thirdly in many other cases, such types of false certificates had been produced. The workman had explained the circumstances in which the two medical certificates were issued that the workman was firstly declared fit on 27th March, 1992 to resume duty on 28th March, 1992 but unfortunately he had fallen ill on the same day that is 27th March, 1992 and had again remained under treatment on the same doctor till 31st May, 1990.

16. It is evident from the perusal of the final order dated 16th June, 1992 Ex. M-16 that the respondent No. 2 dropped the first and third reason and based his order on the second reason without clarifying as to why explanation given by the workman was not satisfactory. It is simply mentioned that the two certificates ware self contradictory because as per first certificate dated 27th March, 1990, the workman was declared physically fit to resume duty w.e.f. 28th March, 1992 and in the second medical certificate, he was shown to have been suffering from viral hapatitis during the period from 28th March, 1990 to 21st March, 1993. It was thus, concluded by him that the workman had manupulated the certificate.

17. it is clear from the position discussed above that the final order of the respondent No. 2 is based on mere suspecion. It can not taken as good and sufficient reason for inflicting penalty of termination of services per decision in the case of Kappaswami *Versus* State of Madras 1956 (II) LLJ 165 (Supra) the impuanged order of terminating the services of the workman is illegal and unjustified.

18. It has been held in the case of the Executive Engineer, Irrigation Division-I, Jaipur and another *Versus* Nar Narain 1994 LLR 538 that where an employer is a public employer, the Labour Court/Industrial Tribunal must be very cautious in awarding the relief of full back wages to the workman. It cannot altogether be ignored that appointment of a workman in various departments of the government is given by particular officer and termination of service is effected by some other officer. It hardly needs emphasis that workman has to be paid without work out of Government revenue. Thus, the public at large suffer from such award of back wages.

19. In the case in hand, it is admitted by the workman himself and he had submitted both the medical certificates alongwith his application to seek permission to resume duty. The workman was supposed to apply for grant of leave on the ground of illness supported by medical certificate soon after commencement of his leave. The non-submission of the medical certificate by the workman promplty led to the commencement of enquiry proceedings against him.

20. It may also be noticed that the workman had submitted two medical certificates. He could send his certificate to the employer earlier. There is absolutely no justification on record to show as to why the first certificate was not sent to the employer. It is thus, evident that the workman himself committed serious irregularity of non-submission of medical certificate in time.

21. It also needs mention that the impugned order in the instant case has been found to be illegal on technical ground.

22. Keeping in view all the facts and circumstances, the workman is not entitled to full back wages. He may therefore, be given 50% of the back wages.

23. For the reasons recorded above, it is held that the impugned order of terminating the services of the workman is illegal and unjustified.The workman is entitled to be reinstated into service with continuity in service and with 50% of the back wages. The period of absence be treated as leave of the kind due to the workman. The award is passed accordingly.

The 28th July, 1994

U.B. KHANDUJA,

Presiding Officer,
Labour Court II,
Faridabad.

Endoresment No. 2583, dated the 3rd August, 1994.

A copy, with three spare copies, is forwarded to the Financial Commissioner and Secretary to Govrenment, Haryana, Labour Department, Chandigarh.

U. B KHANDUJA,

Presiding Officer,
Labour Court II,
Faridabad.

No. 14/13/87-6Lab./36.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No XIV of 1947 (the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad, in respect of the dispute between the Workman and the management of Chief Medical Officer, Faridabad and etc. *versus* Shri Gopal Singh.

IN THE COURT OF SHRI U.B. KHANDUJA, PRSEIDING OFFICER, LABOUR COURT-II FARIDABAD

Reference No. 289 of 1992

Between

1. THE MANAGEMENT OF CHIEF MEDICAL OFFICER, FARIDABAD.
2. MEDICAL OFFICER, PRIMARY HEALTH CENTRE, HATHIN, DISTRICT FARIDABAD.

And

THE WORKMAN NAMALY SHRI GOPAL SINGH, SON OF SHRI CHARAN SINGH, CARE OF SHRI VINAY KUMAR SHARMA, 2193, SECTOR 3, FARIDABAD.

Present :

Shri Vinay Sharma, for the workman.

Shri N.M. Sharma, for the management.

AWARD

In exercise of the powers conferred by clause(c) of Sub Section(i) of Sdection 10 of the Industrial Disputes Act, 1947(herein after referred to as the 'Act') the Governor of Haryana, referred the following dispute between the parties mentioned above, to this court for adjudication,– *vide* Haryana Government Endorsement No. 22657-62, dated 19th May, 1992 :—

Whether the termination of services of Shri Gopal Singh, is legal and justified. If not, to what relief, is he entitled to ?

2. The case of the workman is that his wife Shrimati Rajwati died during her operation of tubectomy due to negligence, carelessness and lethargicact of the doctor on duty. In order to avoid registration of criminal case against the doctor he was appointed as class IV employees by the Civil Surgeon, Respondent No 1

on 14th September, 1989 on compassoinate ground against vacant post with an assurance that his services shall never be terminated. His work and conduct has been quite good and as such the tenure of his service was extended from time to time through different letters of extension, on 26th March, 1991 when he went to resume his duty in Primary Health Centre, Hathin, he was not allowed to attend to his duty on the ground that his service had been terminated. His request to reinstate him into service with continuity in service and full back wages made to the Civil Surgeon, Faridabad Respondnent No. 1, and to the Deputy Commissioner, Faridabad proved futile. He had rendered service for a continuous period of more than 240 days prior to the date of termination of his service. He was not paid any retrenchment compensation. Thus, the impugned order of termination is illegal against the principles of natural justice and is a colourable exercise of the powers vested in the Civil Surgeon.He is thus, entitled to be reinstated into service with full back wages and continuity in service.

3. The respondent No. 1 submitted written statement dated 25th January, 1993 admitting the factum of death of wife of the workman. It was however, denied that she had died due to carelessness and negligence of doctor. It was further submitted that the workman was engaged as class IV employee on salary of Rs.610 per month fixed by the Deputy Commissioner, Faridabad on the recommendations of Senior Medical Officer, Palwal. He was never issued order for doing work continuously. He was always engaged on three months basis. The workman was never sponsored any employment exchange. No industrial dispute exist between the parties because Primary Health Centre under Haryana Government Health Department, does not come within the definition of industry as defined in the Act. The workman is not entitled to any relief.

4. The workman submitted rejoinder dated 17th March, 1993 reasserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed :

(1) Whether the respondent/management is not an industry ? If so, to what effect ?

(2) As per reference.

(3) Relief.

6. Both the sides have led evidence.

7. I have heard the authorised representative of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under : –

Issue No. 1 :

8. The Respondent No. 1 had taken preliminary objection in the written statement that the primary Health Centre functioning under the Government of Haryana, Health Department and managed by the Civil Surgeon, Faridabad does not come within the definition of the term industry as defined in the Act. It was further mentioned in para 3 in the writen statement that the Primary Health Centre (Government Hospital): Hathin, District Faridabad provides health services (basic health amenities to the masses/public) free of cost. There is no source of income in the said Primary Health Centre and is not run as an 'industry'.

9. To support this position MW-2, J.M. Gandhi deposed that the Health Department of Haryana, was governed by the Punjab Civil Service Rules and not by the Industrial Disputes Act and as such the claim of the workman for reinstatement is unjustifed.

10. On the basis of aforesaid position, it has been submitted on behalf of the respondents that the respondents are not covered by the term 'industry' as defined in the Act.

11. In reply, it has been contended on behalf of the workman that it was held by the Supreme Court of India in the case of State of Bombay and others *versus* The Hospital Mazdoor Sabha and others, AIR 1960 Supreme Court 610 that a group of Hospitals run by the Government was covered by the term 'Industry' as defined in the Act. It is thus, clear from the ratio of this case that the respondents in present case are covered by the term industry as defined in the Act.

12. It is not disputed that the workman was appointed by the Civil Surgeon and was posted in Primary Health Centre, Hathin. The Court can take judicial notice of the act that the Civil Surgeon in the State of Haryana are Class I Gazetted Officers. It can also be taken note of that the primary duty of Civil Surgeon is to control and supervise the various hospitals and Primary Health Centres within the area of his juriadiction. It is also not disputed that the employees working under the control of Civil Surgeon are treated as State Government Employees and are governed by the Civil Service Rules of the State.

13. It was held in the case of state of Bombay and another *versus* The Hospital Mazdoor Sabha and others AIR 1960(SC) 610 that the group of hospitals run by the Government for the purpose of giving medical relief to the citizens and for helping to impart medical education are Industries as defined in the Act. Applying the ratio of this case on the facts of the instant case, has to be held that the Primary Health Centre run by the Government of Haryana in which the workman was posted falls with the definition of industry as defined in the Act.

14. In the case of Des Raj *versus* State of Punjab and others AIR 1988 Supreme Court 1182(1188) it was observed that sovereign functions, strictly understood,(alone) qualify for exemption and not the welfare activities or economic adventures undertaken by Government or statutory bodies. It was also held in this case that even in the department discharging sovereign functions, if their units which are industries and they are substantially severable, then they can be considered to come within Section 2j of the Act. Applying these principles, it can be taken that the office of Civil Surgeon comes with the definition of term 'industry' as defined in the Act. Issue No. 1 is decided against the respondent and in favour of the workman.

Issue No. 2

15. Three witnesses have been examined by the respondents. MW-1 GL. Sukla, Senior Medical Officer, Health Centre of Hodal deposed that on 4th September, 1989 Rajwati, wife of Gopal, Singh had expired during the tubectomy operation. Her husband Gopal Singh had submitted an application Ex. M-1 for appointment and he had forwarded that application to the District Family Welfare Officer, Faridabad for sympathatic consideration. MW-2 J.M. Gandhi, Deputy Chief Medical Officer deposed thta the workman was appointed as class IV employee on contigent basis as per rate fixed by the Deputy Commissioner on his application Ex. M-1. He also produced the letter of appointment Ex. M-2. He further stated that the workman was appointed there after by giving breaks. There was no provision in the rules of the Government on the basis of which he could be appointed on permanent basis as he was not appointed through employment exchange. He also placed on record one receipt Ex. M-3 through which a sum of Rs. 10,000 was paid by the Red Cross to the workman by way of compensation. In the end, he stated that the Deputy Commissioner was requested through letter dated 2nd April, 1991 Ex. M-4 to adjust the workman against the same post on compassionate grounds. MW-3 Ram Chander deposed that the workman had worked with them w..e.f. 14th September, 1989 to 26th March, 1991 with breaks and he was paid wages for that period. He further clarified that no person was appointed on daily wages after the termination of services of the workman. In the end, he stated that in May 1993 one person was appointed on regular basis through employment exchange as the name of the workman was not in the list of persons sent by the employment exchange.

17. On the other hand the workman deposed facts mentioned in his claim statement.

18. On the basis of aforesaid position, it has been submitted on behalf of the respondents that it stands established that the workman as appointed as peon for a fixed period from time to time at the rate fixed by the Deputy Commissioner. His services were not extended after 26th March, 1991. It is the case of non-renewal contract of employment covered by the provision of Sub Section 2(oo) (bb) of the Act. It was thus, not necessary to pay retrenchment compensation to the workman. He is thus, not entitled to any relief.

19. In reply, it has been submitted on behalf of the workman that it is clear from the statement of MW-3 Ram Chander that the post of against which the workman was appointed was in existence during the period of his service and even thereafter. It is the reason that a person sponsored by employment exchange was appointed on regular basis in May, 1993. This fact further shows that the breaks in services of the workman were given from time to time as a measure of unfair labour practice to deprive the workman of his right to become regular. It is not disputed that the workman had rendered 547 days service with notional breaks of one to four days after 3 months. The services of the workman thus, could not be terminated without complying with the provision of Section 25F of the Act. The impugned action of the management is thus, illegal and unjustified. The workman is entitled to be reinstated into service with full back wages.

20. A division bench of our own Hon'ble High Court in the case of Haryana State Federation Consumer Cooperative Wholesale Store Limited *versus* Presiding Officer, Labour Court, Chandigarh 1992(1) SCT 697 held as under. :-

> "With the provisions of Section 2(oo) (bb) are to be read along with section 25-F of the Act. When the management allows the workman to continue in service with notional breaks after the workman had put in 240 days in service in 12 months its amounts to unfair labour practice if the services are terminated. In that case Section 25-F(ii) of the Act would cover the case and the workman would be entitled to be reinstatement retrenchment if his services were to be terminated.".

21. The ratio of the aforesaid case squarely applies on the fact of the instant case keeping in view the statement of MW-3 Ram Chander that the post against which the workman was appointed existed during the entire period of service of the workman but he was appointed for a period of 3 months every time and further that the post was filled up through employment exchange. The case in hand thus, does not fall with the ambit

of section 2(oo) (bb) of the Act. The impugned action of respondent No. 2 of terminating the services of the workmen is illegal being violative of the provision of section 25-F of the Act. As a sequel to this finding the workman is entitled to be reinstated into service with full back wages. Issue No. 2 is decided in favour of the workman against the management.

22. For the reasons recorded above, it is held that the termination of services of the workman is illegal and unjustified. Consequenly the workman is entitled to be reinstated into service with full back wages and continuity in service. The award is passed accordingly.

25th July 1994.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 2560, dated the 29th July, 1994.

A copy with, three spare copies is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

No. 14/13/87-6Lab./37.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad, in respect of the dispute between theWorkman and the management of M/s Tryshoera India , Pvt. Ltd., Faridabad *versus* Shri Lalji Yadav.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER LABOUR COURT-II, FARIDABAD

Reference No. 471/93

Between

THE MANAGEMENT OF M/S TRYSHOERA INDIA (P) LTD., PLOT NO. 32, SECTOR 6, FARIDABAD

versus

THE WORKMAN NAMELY : SHRI LALJI YADAV, C/O HIND MAZDOOR SABHA, 29 SAHID CHOWK, FARIDABAD.

Present:

Shri B. L. Gupta, for the workman.

None, for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub Section (i) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication , *vide* Haryana Government Endorsement No. 10229—34, dated the 24th February, 1992:

Whether the termination of services of Shri Lalji Yadav is legal and justified. If not, to what relief, he is entitled ?

2. The case of the workman is that he was employed with the management on the 25th March, 1985 and his last drawn wages were Rs. 919050. He had not provided any cause of complaint regarding his work to the management. On the 26th April, 1991 the management had issued notice that the factory had been closed due to non-coperation of the workmen and the services of all the workmen stood terminated. This was done by the management as the union of the factory had given a joint demand notice dated 26th February, 1991. The management had started getting the work done from the contractors. On the other side pressure was put in the union for settlement as was done earlier on the year, 1989. The management also got the matter settled with certain workmen through settlement under section

12(3) of the Act. The management had been running of the factory with the help of the contractors and as such the complaint was made to the Labour Inspector. The Labour Inspector inspected the factory and had found the contractor working for the management. Thus, the termination of services of the workman effected by the management in the garb of closure of the factory is illegal, against the provisions of the Act and violative of rules of natural justice. Consequently, the workman is entitled to be reinstated into service with continuity in service and with full back wages.

3. The management appeared the submitted written statement dated the 27th July, 1991 stating therein that the Government has made the reference without applying its mind. The factory had been closed with effect from the 26th April, 1991 and all the employees were accordingly removed from services. The factory had been closed due to shortage of orders and financial crisis. Moreover the management had to vacate the rented premises to obey the order of Hon'ble High Court. All the workers had collected full and final dues before the Labour-cum-Conciliation Officer Sector-7, Faridabad. The workman has raised the dispute just to blackmail the management and as such the workman is not entitled to any relief.

4. The workman submitted rejoinder dated the 24th November, 1992 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed on the file titled as Ved Ram *versus* Tryshora (Reference No. 144/92) Faridabad.

(1) Whether the reference is not maintainable in veiw of preliminary objection ?
(2) As per terms of reference.

6. It may be added that this case was consolidated with the above mentioned case of Ved Ram *versus* Tryshora Reference No. 144/92 and was fixed up for evidence of the management. The management could not lead evidence till this case was transferred from Labour Court, Gurgaon to this court. It was separated on the request of the parties.

7. The management sought several adjourments to lead evidence. On 4th March, 1994 none appeared on behalf of the management and it was thus ordered that the management be proceeded against *ex parte*.

8. The workman has examined himself on oath and has stated facts mentioned above.

9. I have heard Sh. B. L. Gupta authorised representative of the workman and have also gone through the evidence on record. My findings on the aforesaid issues are as under :-

Issue No. 1 :

10. There is no evidence from the side of the management to prove the contention on the basis of which this issue was framed. Consequently, Issue No. 1 is decided against the management and in favour of the workman.

Issue No. 2 :

11. The workman has stated on oath that he was employed by the management as Machine Operator with effect from 25th March, 1985 and had worked upto 26th April, 1991. It is thus, clear that the workman had rendered service for a continuous period of more than 240 days preceding on the date of termination of his services. The management has not led any evidence to show that the factory was closed as per law and the workman was offered compensation required to be paid to him. The management has also not led any evidence to prove that the workman had settled his claim with the management. Keeping in view its position, the termination of services of the workman by the management is illegal and justified. Consequently, he is entitled to be reinstated into service with full back wages and continuity in service. Issue No. 2 is decided against the management and in favour of the workman.

12. For the reasons recorded above, it is held that the termination of services of the workman by the management is illegal and unjustified. The workman is entitled to be reinstated into service and continuity in service with full back wages. The award is passed accordingly.

The 28th July, 1994.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2564, dated the 29th July, 1994.

A copy, with three spare copies, is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.